

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4831 OF 2001

Maharashtra State Road Transport)
Corporation having its office at)
Vahatuk Bhavan, Dr.A.Nair Marg)
Bellasis Road, Bombay Central)
Bombay 400 008.).. PETITIONER

Versus

Ahmed Miya Mohammed Shaikh)
At and Post Jejuri)
Taluka Purandar, Dist. Pune.).. RESPONDENT

Mr.G.S. Hegde for the Petitioner.

Mr.K.S. Bapat for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 11TH OCTOBER 2005

ORAL JUDGMENT :

. The Petitioner challenges the concurrent findings of fact of the Labour Court as well as the Industrial Court in Revision. Both the Courts below have held that the Respondent is entitled to reinstatement with continuity of service and back wages for the intervening period. Both the Courts below have found that the misconduct alleged against the Respondent was not proved.

2. The Petitioner had issued a charge sheet to the Respondent on 24th September 1992 alleging that he had committed misconduct under Clauses 12(b), 24(a), 24(b)

and 25 of the Discipline and Appeal Procedure. An enquiry was held against the Respondent wherein it was found that he had committed the acts of misconduct alleged against him. It was found that the Respondent had purchased a vehicle, tempo trax, which he used for transporting passengers from one place to another. The allegation was held to be proved because the driver engaged to drive the tempo trax was prosecuted when he was found ferrying passengers without licence under the Motor Vehicles Act. The Enquiry Officer considered all these facts and concluded that the Respondent was guilty of the misconducts alleged against him. The disciplinary authority acted upon the Enquiry Officer's report and dismissed the Respondent from service. Aggrieved by this decision, the Respondent filed Complaint (ULP) No.23 of 1994 under Items 1(a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Respondent examined himself before the Labour Court. However, the Petitioner chose not to examine anybody on its behalf and relied on the enquiry proceedings.

3. The Labour Court held that the enquiry conducted against the Respondent was fair and proper. However, the findings were found to be perverse. According to the Labour Court, although undisputedly the tempo trax

was registered in the name of the Respondent, there was no material on record to show that he was actually running the tempo and was transporting passengers. The Labour Court, therefore, held that no misconduct was proved against the Respondent. The Labour Court granted reinstatement with continuity of service and full back wages. While the Complaint was pending, the Petitioner had already reinstated the Respondent in service on 2nd January 1995 pursuant to the interim orders passed by the Labour Court.

4. Aggrieved by the decision of the Labour Court, the Petitioner filed Revision Application (ULP) No.77 of 1999 before the Industrial Court. By judgment dated 13th October 2000, the Industrial Court upheld the order of the Labour Court and dismissed the Revision Application. Both these judgments have been challenged in the present Writ Petition.

5. Mr.Hegde, learned Advocate for the Petitioner, states that the Petitioner does not want to challenge the findings of the Labour Court regarding reinstatement. The Petitioner has already reinstated the Respondent and, therefore, will take no further action in that regard. However, he is aggrieved by the order of awarding back wages to the Respondent. According to Mr.Hegde, there can be no dispute that the

Petitioner was right in chargesheeting the Respondent for owning a tempo trax and ferrying passengers unauthorisedly. The conduct of the Respondent was directly prejudicial to the business of the Corporation and the misconduct which fell within clause 12(a) must be held to be proved. He submits that, in any event, the Respondent has been adequately compensated between the period 22nd March 1993 when he was dismissed, till 2nd January 1995 when he was reinstated pursuant to the orders of the Labour Court . Therefore, according to Mr.Hegde, no back wages will be payable to the Respondent.

6. Mr.Bapat, on the other hand, submits that there are concurrent findings of both the Courts below to the effect that the Petitioner Corporation was unable to prove that the Respondent was engaged in ferrying passengers or was running a business directly in conflict with the business of the Corporation. He submits that the Petition should be dismissed by accepting the concurrent findings of both the Courts below, since this Court is exercising powers of superintendence under Article 227 of the Constitution of India. The learned Advocate also submits that unless the Petitioner Corporation is able to prove that the Respondent had in fact engaged in the business, he cannot be found guilty of the charges levelled against

him. He urges that merely because the Respondent owned the vehicle, it would not necessarily mean that he was using it for business. Nor should the Respondent be deprived of the back wages payable to him.

7. The misconducts alleged against the Respondent is with regard to clause 12(b) which is with regard to fraud, dishonesty or misappropriation in connection with the business of the Corporation. Clauses 24(a) and (b) of Discipline and Appeal Procedure read thus :

"25.(a) Undertaking or entering into or continuing in employment, private trade, contract, business or vocation of any nature, either independently or in partnership and either directly or indirectly, unless this restriction has been relaxed as a special case by the Corporation in respect of the employee concerned or undertaking regular or part-time employment except occasional or temporary and part-time work undertaking with the permission of the Competent Authority.

(b) Using position as an employee of the Corporation to help any business or undertaking."

8. Clause 25 is in respect of failure to sever completely the employee's connection with any private trade contract, business or vocation or the failure to give up any employment at the time of appointment unless relaxed as provided in Regulation 48-A of the S.T. Employees' Service Regulations. A bare perusal of clause 24(a) would indicate that an employee if continue either directly or indirectly in private trade,

contract, business or vocation of any nature either independently or in partnership without taking permission of the Corporation, amounts to a misconduct. There is no dispute that the vehicle was owned by the Respondent. The Respondent did not know how to drive neither did he have a driving licence. However, a driver was engaged to drive the vehicle owned by the Respondent. This driver was apprehended and convicted for ferrying passengers without any licence. It is impossible to believe the case as made out by the Respondent that he would own a vehicle, without knowing how to drive and not engage in business through his driver. Admittedly, there is nothing to show on record that the driver was engaged to drive the Respondent for his personal purposes only. Therefore the conclusion would be that he was employed in order to ferry passengers. The driver was convicted for this charge although the Respondent was not charged in any criminal action. The preponderance of probabilities obviously indicate that the Respondent had engaged in the business which was directly prejudicial to the interest of the Corporation. Assuming that the Respondent did not drive the vehicle himself, there can be no gainsaying that he was aware of his driver carrying out the trade. The Respondent has not examined the driver to indicate that he had ferried the passengers of his own accord and without the consent of the Respondent. In such

circumstances, it is difficult to believe that the Respondent had not engaged in any business. The charge under clause 24(a) must be held to be proved.

9. However, in my view, the punishment of dismissal cannot be accepted and, therefore, the Petitioner Corporation has rightly decided not to challenge the reinstatement of the Respondent. The Respondent is in service after his reinstatement on 2nd January 1995. However, in view of the findings as above, he has committed misconduct under clause 24(a), he is not entitled to any back wages.

10. Writ Petition disposed of accordingly. No order as to costs.